

ANDHRA PRADESH HIGH COURT

Sr. Y. Philomena

Vs

Govt. of A.P

(V.Sivaraman Nair, J.)

04.02.1994

ORDER

V. Sivaraman Nair, J.

1. Petitioner was the Principal of St. Ann's College for Women, Mehdipatnam. She was also correspondent of other colleges of the St. Ann's Convent Society. By order dated 15th and 16th September, 1993, the 16th respondent acting through the 10th respondent, placed the petitioner under suspension from the post of Principal in the former and as correspondent in the latter order. Petitioner Challenges those orders. The reliefs which she seeks in the Writ Petition are-

1. A declaration that she is entitled to function as Principal and Correspondent of St. Ann's Degree College for Women, Mehdipatnam and as Correspondent of St. Ann's junior Colleges.

2. A declaration that respondents 1 to 6 can transact any matter relating to St. Ann's Colleges with no one except the petitioner in her capacity as Principal and Correspondent of the above colleges and that they should ignore all representations, reports or communications sent to them by any of the respondents 7 to 14 claiming to represent St. Ann's Colleges, Mehdipatnam, Hyderabad, on or after 10-6-1992.

3. A declaration that the proceedings of the 2nd respondent dt.13-11-1992 extending the period of suspension as arbitrary, illegal, violation of Principles of natural justice and also violative of the statutory provisions in Section 79 of the A.P. Education Act.

4. A declaration that the notices dt.1-7-1992 and 10-8-1992 which are now brought into existence by respondents 1 to 14 and all the proceedings pursuant to that notice are illegal, unenforceable and untenable.

5. A declaration that the functioning of respondent No. 9 as Principal and Correspondent of St. Ann's Colleges as arbitrary, illegal and unsustainable and a further declaration that respondent Nos. 1 to 6 should ignore all her actions, letters and communications sent to them as Principal and Correspondent.

6. A declaration that the letters addressed by respondent No. 7 after the judgment in W. A. 612

/92 directing the petitioner to join at Generalate pursuant to her transfer order and the consequential action taken by her by publications as arbitrary, illegal and unjust.

7. A declaration that the assumption of powers by respondents 7 to 14 in St. Ann's Colleges after the transfer order as arbitrary, illegal, unjust and consequently to direct a thorough enquiry into all their activities and the conduct and functioning of respondents 7 to 14 claiming to be on behalf of the St. Ann's Colleges.

8. A declaration that the conduct of Respondents 7 to 14 in making frequent press publications about the petitioner violating her fundamental rights guaranteed under Article 221 of the Constitution of India and holding a parallel discussions and publications thereof on issues pending in Court or decided by the Court as illegal and as interfering with the due process of law and to consequentially initiate appropriate proceedings against them.

9. A declaration that Crime No. 86/92 on the file of CCS along with connected proceedings on the file of the 6th respondent as illegal, arbitrary and unconstitutional; and

10. A declaration that the order dt.29-1-1993 in I.A. No. 2971 of 1992 in O.P. 1241 of 1992 on the file of the Chief Judge, City Civil Court, Hyderabad, as without jurisdiction and as inconsistent with the earlier order dt.6-11-1992 in I.A. 2968/92 in O.P. 1075/92, passed by him as violative of the orders of the High Court in CRP 37/93 and to set aside the same.

2. All these reliefs emanated from transfer of the petitioner from the post of Principal of the St. Ann's College for Women, Mehdipatnam to St. Ann's Convent Society, Mehdipatnam. That transfer was assailed in W.P. No. 7412/92, which the petitioner had filed on 18-6-1992. A learned single Judge of this Court dismissed the same on 22-6-92. Petitioner filed an appeal, which was numbered as Writ Appeal No. 612/92. That appeal was allowed by a Division Bench of this Court of which I was a member, by judgment dated 10-8-1992. Leave to appeal to the Supreme Court was rejected. However, this Court directed that status quo as on that date should be maintained for six weeks so as to enable the respondent to file an appeal before the Supreme Court. The Special Leave Petition filed against that Judgment was dismissed by the Supreme Court on 21-9-1992, with the result that the Judgment dt.10-8-92 in W.A. No. 612/92 became final. Respondents filed a Review Petition before the Supreme Court, which was dismissed on 4-11-1992. In the mean time, respondents 7 to 14 caused a notice dt.4-7-1992 to be brought into being, under which, one of the subjects for consideration at the general body meeting purposed to be held on 30-7-1992 was certain undesirable activities of the petitioner as Secretary of the Society and Correspondent and Principal of St. Ann's College for Women, Mehdipatnam, Hyderabad. After the Writ Petition was allowed setting aside the order of transfer on the ground that it was not issued by a competent authority, the 10th respondent, allegedly acting on behalf of the management of St. Ann's Convent Society, passed the impugned orders dt.15-9-1992 and 16-9-1992.

3. Petitioner filed OS. 4030/92 on the file of the VI Assistant Judge, City Civil Court, Hyderabad on 22-10-1992 seeking a declaration that the said orders were illegal. In LA. 1603/92, she prayed for an injunction to stay the proposed disciplinary enquiry scheduled to be held on 25-10-1992. The trial Court on 23-10-1992 passed an order of ad interim injunction as prayed for. Respondents filed C.M.A. 318/92 before the Chief Judge, City Civil Court, Hyderabad. On 6-11-1992 the Chief Judge, dismissed the aboe C.M.A. on merits, and directed the VI Assistant Judge,

to dispose of LA. Nos. 1603 and 1604 of 1992. Respondents 7 to 10 filed C.R.P. 3755/92 against the order in C.M.A. 318/92 on 18-12-1992. They subsequently withdrew the C.R.P. and the same was dismissed, with the result that the order in C.M.A. 318/92 became final. The order of injunction issued by the VI Assistant Judge also continued pursuant thereto. In O.S. 4030/92, petitioner had raised a contention that the association of persons who were alleged to have issued the orders of suspension dated 15th and 16th of September, 1992, was not the duly constituted management of the Colleges and therefore it had no jurisdiction to pass any order of suspension. It was on prima facie acceptance of that submission that the VI Assistant Judge, passed the ad interim order of injunction.

4. Petitioner filed O.P. 973/92 under Section 11 of the Andhra Pradesh (Telangana Area) Public Societies Registration Act, 1350 Fasli in the Court of the Chief Judge, City Civil Court, Hyderabad on 31-10-1992 seeking a declaration that "the activities of the respondents are detrimental and prejudicial to the interests of St. Ann's Convent, Mehdipatnam" and a further declaration that "the claims of the respondents about the general body meetings and executive body meetings of the convent Society as per their letter dt.10-9-1992 as illegal, without jurisdiction and in violation of rules and regulations of the Convent Society and are not binding on the petitioner". In the above O.P., the entire case was rested on the judgment in C.M.A.318/92. In O.S. 4030/92, the reliefs which the petitioner sought were-

1. A declaration that the communications dt.15-9-1992 and 16-9-1992 issued by the defendant No. 2 herein claiming to have suspended the plaintiff as Principal and Correspondent of St. Ann's Degree College and Post-graduate Centre, Mehdipatnam and as Correspondent of St. Ann's Junior College for girls, Mehdipatnam, Hyderabad, as invalid, illegal without jurisdiction and not binding on the plaintiff.

2. For a perpetual injunction restraining the defendants 1 to 4, their associates, followers, representatives, workmen from interfering with the management of St. Ann's College, Mehdipatnam and functioning by the plaintiff as the Principal and Correspondent.

5. Respondents 7 to 10 and 16 filed O.S. 1209/92 before the IV Addl. Judge, City Civil Court, Hyderabad, seeking a declaration that "the Board of Management (1st defendant therein) stated to have been constituted by the 2nd defendant is illegal and void body and nonest in law". They also sought a consequential perpetual injunction restraining the 2nd defendant, her men, subordinates, agents and G.P.As., from interfering with the affairs of the 1st plaintiff Society including colleges established by the plaintiff society pending disposal of disciplinary proceedings against her. Here again, the pleadings disclosed the same facts as are covered by O.S. 4030/92 and O.P. 973/92 though they contain slightly different versions.

6. Proceedings are therefore pending in respect of the same matter before the Chief Judge, City Civil Court in O.P. 973/92, before the VI Assistant Judge in O.S. 4030/92 and before the IV Addl. Judge, City Civil Court (O.S. 1209/92) filed by the contesting respondents in this Writ Petition. In addition to the above, petitioner has filed W.P. 3433/93. Writ Appeal No. 265 of 1993 is filed against the interim order made by a learned Single Judge in W.P.M.P. 4424/93 in W.P. 3433/93.

7. On 7-11-1992, the 10th respondent applied to the competent authority seeking extension of

suspension of the petitioner for a further period of two months in terms of the provisions contained in Sections 79 of the A.P. Education Act. By proceedings dt.13-11-1992, the competent Authority granted extension of suspension. After suspension of the petitioner from the post of Correspondent, respondents 7, 10 and 16 appointed sister Mary Velangini as Correspondent of two of the Colleges. That order was sent for approval of the competent authority. By order dt.17-3-1993, the authority refused to approve that appointment. The 10th respondent filed an appeal against that order under Section 89 of the A.P. Education Act on 26-3-1993. While refusing to approve the appointment of sister Mary Velangini as correspondent, the competent authority directed that the Principal of the Government Degree College should be the channel through which communications to and from the college should be routed and that that grants in-aid to the staff should be released to the college. The 16th respondent filed W.P. 6106/93 challenging the order dt.17-3-1993 of the Commissioner of Collegiate Education. That Writ Petition was dismissed by me by judgment dt.9-11-1993 holding that the petitioner therein having effective alternative remedies should rather pursue such remedies than continuing the Writ Petition. The validity of the order dt.17-3-1993 which was consequential upon the order dt.16-9-1992 is now pending before the Government pursuant to the directions contained in the above judgment.

8. In the mean time, the 16th respondent lodged a First Information Report dt.23-11-1992 with the Central Crime Station, Hyderabad, alleging fraud, misappropriation, breach of trust, cheating etc., against the petitioner. The Station House Officer of the Central Crime Station registered the same as Crime No. 86/92 against the petitioner under Sections 468, 471, 408 and 420 of the I.P.C. and took up investigation. Petitioner has sought a direction to quash the proceedings in the above crime.

9. It is clear from the above recitals that substantially the same reliefs are sought by the petitioner in O.S. 4030/92. The defence which the respondents have raised is the subject-matter of O.P. 1241/92. O.P. 973/92 which the petitioner has filed, also seeks reliefs which, though not identical, have a considerable bearing on the reliefs which are sought for in this Writ Petition. In addition to that, is O.S. 1209/92 which the respondents have filed. All the time, the interim order which the petitioner had obtained in I.A. 1604/92 has been continuously in existence precluding completion of the disciplinary proceedings against the petitioner.

10. The question which I have to consider is whether there are such extraordinary circumstances which compel the exercise of discretion of this Court in the extraordinary proceedings under Article 226 of the Constitution of India during the pendency of equally efficacious alternative proceedings which are pending before various Courts of law. The other question is whether this Court shall grant the relief of quashing the proceedings in Crime No. 86/92 in these proceedings?

11. Counsel for the petitioner submitted that the orders of suspension dated 15th and 16th September, 1992 which were alleged to have been issued pursuant to the resolution dated 25th August, 1992 were passed without implementing the mandamus contained in the judgment in Writ Appeal No. 612/92 dt.10-8-1992 and violation of the order to maintain the status quo for a period of six weeks. It is submitted that these orders amounted to circumventing the orders of Court and preventing the petitioner from reaping the fruits of the judgment of this Court in W.A. 612/92. This is said to be an extraordinary circumstance justifying grant of the relief sought for in this Writ Petition. It is submitted further that continuance of suspension beyond the period of four

months is violative of Section 79 of the A.P. Education Act, in that the statute does not permit extension of the period of suspension due to orders of stay issued by Courts. It is also submitted that the effect of orders of the suspension is to cause an imputation on the petitioner as Principal and Correspondent of the colleges, and in that sense, it affects her reputation which is part of her right to life. It is also the case of the petitioner that the order dated 13-11-1992 passed by the competent authority extending the period of suspension under Section 79 of the A.P. Education Act is illegal and it did not give any reason which is directly attributable to the petitioner. Counsel submits that in the absence of reasons mentioned in the order, attempt to supplement the order by reasons mentioned in the affidavit is impermissible. That order is also said to be violative of principles of natural justice, in that the petitioner was not heard before the order was passed and no reasons in writing were communicated to the petitioner. Counsel submits that the terms of Section 79 of the Education Act make it clear that there was an obligation cast on the competent authority that on the expiry of four months of suspension, the employee shall be restored to the post from which he was suspended, with all incidental benefits and all the advantages attached to the post, salary or remuneration being only one of the many such incidents. It is submitted that payment of salary to the petitioner as Principal of the College while keeping her out of office does not amount to compliance with the provisions of Section 79 or the obligation of the management under the Education Act or under the general law of Master and servant. It is submitted that the reliefs which the petitioner has sought in O.P. No. 973/92 pending before the Chief Judge, City Civil Court or in OS. 4030/92 on the file of the VI Asst. Judge or those sought by the respondents in O.P. 1241/92 or O.S. 1209/92 are not the same as the reliefs sought in the Writ Petition. It is therefore submitted that the argument that the petition is liable to be dismissed due to pendency of parallel proceedings in various Courts or alternative fora is not sustainable. Petitioner submits that the above facts are sufficiently extraordinary circumstances justifying interference by this Court. In respect of the relief sought against Crime No. 86/92, petitioner submits that the proceedings pending in various Courts including this Writ Petition is sufficient indication of the fact that what is involved in the dispute between them is purely of a civil nature and could not have been the subject-matter of criminal proceedings.

12. Sri Parasaran cited a number of precedents in support of his various submissions. Equally emphatic were the submissions on behalf of the respondents. I have cautioned myself by stating that unless I find extraordinary circumstances justifying interference, the ordinary rule shall prevail that a person who has got other efficacious alternative remedies or has gone one step further by invoking jurisdiction in parallel proceedings is not entitled to any relief in exercise of the discretion of this Court in the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India. The circumstances mentioned by Counsel for the petitioner are not such extraordinary circumstances justifying departure from the ordinary rule.

13. It is true that by judgment dt.10-8-1992 in Writ Appeal No. 612/92 the Division Bench, of which I was a member, had quashed the order dt. 10-6-92 of the 7th respondent, transferring the petitioner from St. Ann's Degree College, Mehdipatnam to Guntur, as devoid of jurisdiction. It is also true that the Bench issued a Writ of mandamus directing continuance of the petitioner in the post of Principal and Correspondent of St. Ann's Degree College and Post-graduate Centre and as Correspondent of the Junior College, Mehdipatnam. After dismissal of the oral application for leave, the Bench directed maintenance of status quo as it obtained on the date of the judgment for a period of six weeks -"so as to enable the respondents to seek special leave of the Supreme Court to file an appeal".

14. The question whether the resolution dt.24-8-1992 which culminated in the two orders dated 15th and 16th September, 1992 amounted to violation of the Writ of mandamus issued by this Court or whether it amounted to violation of the order directing status quo to be maintained is a matter which is pending before the Civil Court in OS. 4030/92 before the VI Assistant Judge, City Civil Court, Hyderabad. The averments contained in paragraphs 15 to 19 of the plaint in O.S. 4030/92 are almost the same contentions as are made in this Writ Petition. It is also clear from the relief sought in paragraph 24 of the plaint viz., "It is clear that the suspension orders dt.15-9-93 and 16-9-1993 suspending the plaintiff from the post of Principal of St. Ann's Degree College for Women, Mehdipatnam and Post-graduate Centre, Junior College for girls, Hyderabad, as invalid, illegal, without any authority and contrary to the Judgment of the Hon'ble High Court in W.A. 612/92."

I have referred to O.S. 1209/92 which the 16th respondent and its constituents had filed and which is pending before the IV Additional Judge, City Civil Court, Hyderabad, seeking a declaration that "the Board of Management stated to have been constituted by the 2nd defendant is illegal and void body and nonest in law" and for a perpetual injunction "restraining the 2nd defendant, her men, subordinates, agents and G.P. As., from interfering with the affairs of the 1st plaintiff Society including colleges established by the plaintiff society." I have therefore to proceed on the assumption that there are parallel proceedings which the petitioner had resorted to. I am clear in my mind that the petitioner has an efficacious alternative statutory remedy of an appeal against the order of suspension and she had resorted to that remedy, by filing an appeal under Section 89 of the Education Act against the order of the competent authority. The entire gamut of the controversy is therefore open before a Civil Court as also before the statutory appellate authority viz., the Government. The latter has passed an order in favour of the petitioner directing payment of the salary of the petitioner as Principal of the College through the Principal of the Government College, Khairatabad. Petitioner had also obtained an interim order in LA. 1603/92 in O.S. 4030/92 injuncting the respondents from proceeding with the disciplinary proceedings against her. As a consequence thereof, in spite of the order of suspension in aid of the disciplinary proceedings, the respondents have been precluded from completing the same.

15. Counsel for the petitioner submitted that payment of subsistence allowance or even full salary may not amount to restoration of the petitioner to the post of Principal or Correspondent, which she is entitled to hold in terms of Section 79(2) of the A.P. Education Act. I do not propose to enter into this controversy, except to indicate that in general law as also in the law relating to master and servant, the normal consequence of declaring an order of suspension or termination of service as unsustainable is to restore to the concerned employee the remuneration which he or she would have drawn but for the offending order. The mere fact that the order of suspension may affect the reputation of the employee does not appeal to me to be a sufficiently extraordinary circumstance justifying exercise of discretion by this Court in favour of the petitioner. I am not persuaded to hold that a suspended employee, who by virtue of statutory provisions or Court orders, is given the remuneration and all other attendant benefits as if he or she continued in employment, can qualify himself or herself as a person aggrieved by the order of suspension. The decisions of the Supreme Court to which reference was made do not proceed farther than holding that an employee who is suspended from service is entitled to all benefits which he or she would have obtained but for the offending order. It is not in dispute that the petitioner has been and is enjoying all such benefits. I cannot persuade myself to hold that the petitioner is entitled to insist that she shall be permitted to function as principal of the college in addition to

her right to receive emoluments and other benefits attached to the post of Principal.

16. I have referred to the fact that the suspension of the petitioner from the post of correspondent is also the subject-matter in other proceedings in O.S. 4030/92. OS. 1209/92 which the respondents have instituted covers that field as well. Petitioner had approached the Government against the order of the competent authority. The 16th respondent had appointed a substitute in the place of the petitioner as Correspondent of the College and approached the competent authority viz., the Commissioner of Collegiate Education for approval of such appointment. By order dt.17-3-1993, the Director of Collegiate Education refused approval on the basis of the representation which the petitioner had submitted stating that her suspension as Correspondent was unsustainable. The 7th respondent filed an appeal before the State Government against that order under Section 89 of the A.P. Education Act. The correctness, legality and propriety of the order dt. 16-9-1993 suspending the petitioner and the consequential order dt.17-3-1993 appointing a substitute in her place as Correspondent of the College are pending before the State Government. The 7th respondent had filed W.P. 6106/93 seeking the issue of a declaration that the order dt.17-3-1993 as arbitrary, illegal and void as also violative of principles of natural justice. I heard that Writ Petition and disposed of the same by my judgment dt. 9-11-1993 holding that "in view of the fact that there is an efficacious alternative remedy available to the petitioner and she having availed that remedy, there is no justification for invoking the extraordinary jurisdiction of this Court." For the same reason, the present Writ Petition in so far as it assails the orders dt.16-9-1992 has got to be dismissed.

17. What remains for me to consider is the relief which the petitioner seeks for quashing the proceedings in Crime No. 86/92 on the ground that lodging of the complaint by the management was not done in bona fide exercise of managerial functions. True it is that in very extraordinary circumstances, the Court may have jurisdiction to quash even an F.I.R. so as to prevent the investigating agency from proceeding with the complaint against an individual. It is axiomatic that the circumstances shall be such that no element of any offence falling under the Indian Penal Code or under any special statute is made out in the complaint. On the other hand, it may be that on a detailed investigation of allegations in the complaint and all the attendant facts which disclose offences, it may be found that such allegations in the complaint are not established satisfactorily or that the offences are not made out. That possibility is hardly a reason for the Court to restrain the police from registering the complaint or investigating the same further. It is primarily the duty of the investigating agency to ascertain whether the allegations are true and whether they disclose any offence. It is not advisable that this basic function of the investigator is taken over by the Court in exercise of jurisdiction under Article 226 of the Constitution. The decisions which were cited viz., *State of West Bengal v. Swapan Kumar Guha*, , *State of Haryana v. Ch. Bhajan Lal*, , and *Janatadal v. H.S. Chowdhary and Ors.*, do not lay down any proposition that in all circumstances where a petitioner comes to Court alleging absence of bona fides in the conduct of the complaint or the possibility of the allegations being proved to be baseless on detailed investigation, the Court may interfere and quash the investigation into the criminal complaint or the F.I.R. or all consequential proceedings. The police have a duty in a case where a complaint of commission of offence punishable under any penal law, enforcement of which is within its jurisdiction, is filed before it, to investigate the allegations and take a decision one way or the other - either to prosecute the offender or to report to the Court that no offence is made out. That decision vests primarily in the investigating agency and it is well that the Courts do not interfere with the exercise of that jurisdiction by the competent authority. If the Court interferes

in all such situations and pre-empt the investigator from discharging all such duties as the criminal laws entrust with him, it may result in an unmanageable situation. It may also be that the allegations may be found to be baseless and devoid of merit on fuller investigation by the police. The Court cannot hazard such conclusions so as to prevent a full-fledged investigation by the police. The relief of quashing crime No. 86/92 cannot therefore be granted. It may not be understood that I have expressed any opinion on the merits of the allegations against the petitioner. I only state that at this stage it is hardly possible for this Court to speculate the likely results of an investigation and then hold that since the petitioner is not likely to be found fault with, the investigation should be halted in its tracks.

18. Counsel for the petitioner submitted that the conduct of the respondents in hounding the petitioner out of the institution and harassing her in spite of orders in her favour justifies an order restoring her to the position of Principal and Correspondent which position she would have occupied but for the impugned orders. Counsel for the respondents on the other hand submitted that the petitioner is not entitled to seek any relief from this Court after having obtained interim orders from a Civil Court on the sly precluding the disciplinary enquiry into the allegations against her and that it is open to the petitioner to prove her innocence in the disciplinary proceedings, in which case, the posts of Principal and Correspondent have to be restored to her with all other attendant benefits.

19. I do not think that I am called upon to consider these various submissions at this stage. Suffice it for me to state that both parties have been attempting to establish their respective legal and factual positions by resort to all proceedings known to law as they are entitled to. If resort to such proceedings by one disentitles the Court to interfere, the same must apply to the other also.

20. In this view, the Writ Petition is liable to be dismissed. I do so. There will be no order regarding costs. I repeat the caution that whatever is stated in the Judgment is not meant to influence the proceedings pending before Courts or statutory authorities in any manner; nor should such observations be taken to have any reflections on the investigation into the complaint registered as Crime No. 86/92.

21. I should add a post script. It is unfortunate that the parties have chosen open confrontation on matters affecting the present and future of a reputed educational institution. No efforts to pre-empt the other is spared. No Courts are left out. No proceedings known to law are saved. It is a no-holds-barred situation. It is needless for me to state that the way of the Cross is not always Crusades; it can more often be, and has been, commiseration. Christian charity and compassion are not dead letters. They have operated in more difficult situations to solve more intricate problems. They shall not fail in this case. I conclude in the note of hope that parties will settle their differences in the true spirit and best traditions of Christian benevolence and understanding.